

Person to Contact:

Telephone Number:

Refer Reply to:
EP/EO:T

Date: AUG 1 1996

CERTIFIED MAIL.

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reason for this conclusion and the facts on which it is based are explained below.

The information you submitted indicates that you were incorporated on [REDACTED]. No specific purpose of the corporation was indicated in the Articles of Incorporation. Your bylaws state that the "Co-op shall be organized and function for the purpose of:

- A. Maximizing the efficient utilization of market-wide advertising media;
- B. Obtaining media purchases within the market area for the benefit of the Co-op;
- C. Developing and instituting uniform in-store promotional programs; and
- D. Promoting [REDACTED] in the [REDACTED] Metropolitan area."

Your membership includes all [REDACTED] company-owned stores and franchise stores within the [REDACTED] area. This area includes [REDACTED], [REDACTED] and [REDACTED], [REDACTED] and [REDACTED]. This area may be expanded by 51% majority of the Co-op members.

Your organization acts as a pool for advertising funds for [REDACTED] and its franchisees doing business in the [REDACTED] area. Each store is obligated via the initial franchise agreement, to contribute [REDACTED] % of its monthly sales to the fund. The funds are disbursed solely for advertising purposes that benefit all stores. You state that this purpose is "merely to promote, through advertising, [REDACTED] stores in the [REDACTED] area and all monies spent work to this end."

Code	Initiator EO: 2204	Reviewer [Signature]	Reviewer EP/EO:T	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[Signature]	[REDACTED]				
Date	7/24/90	7/23/90	8-1-96				

Your income is derived from a percentage of each stores sales that comprise the advertising co-op, interest earned on the fund's money market account and miscellaneous reimbursements from franchisees.

You show expenses of disbursements for the benefit of your members and other salaries and wages. The disbursements for your members include media advertising - print and radio, promotional items, consultants, talent fees, birthday club, banners and other expenses necessary for the operation of the organization.

Section 501(c)(6) of the Internal Revenue Code provides exemption from Federal income tax to organizations such as business leagues, chambers of commerce, real estate boards and other organizations that are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations defines a 501(c)(6) organization as follows.

1. A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of any kind ordinarily carried on for profit.
2. A business league is an organization of the same general class as a chamber of commerce or board of trade. The activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of services for individual persons.
3. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit even though the business is conducted on a cooperative basis and produces only sufficient income to be self-sustaining is not a business league.

National Muffler Dealers' Association v. U.S. 440 U.S. 472(1979) discusses an organization that applied for tax exempt status under section 501(c)(6). In this case, the organization formed a trade association of franchised muffler dealers. The organization limited its membership to Midas Muffler dealers and its activities to Midas businesses. The organization was denied tax exemption.

Regulations sections 1.501(c)(6)-1 states, in part, that "tax exempt business leagues' activities should be directed to the improvement of business conditions in one or more lines of business." Since your organization has confined its activities to [REDACTED] and franchises in the [REDACTED] area and does not include members from organizations that are not affiliated with [REDACTED], you are not an industry-wide organization and you do not meet the line of business requirement of section 501(c)(6).

Revenue Ruling 55-444 published in IRS Cumulative Bulletin 1955-2 on page 258 discusses an organization formed to promote the business of a particular industry and which carries out its purposes primarily by conducting a general advertising campaign to encourage the use of products and services of the industry as a whole. The organization was entitled to exemption under 501(c)(6) as a business league, notwithstanding the fact that such advertising to a minor extent constituted the performance of particular services for its members.

The difference between this organization and your organization is that the cited organization promoted the industry as a whole. Membership was open to any person or association engaged in the retailing of products related to the particular industry. None of the advertising contained the names of individuals members with the exception of one newspaper advertisement and a listing in the telephone directory. However, this represented only a minor portion of the total advertising expenditures and was regarded as only incidental to the main purpose. Under these circumstances, the advertising campaign was primarily for the benefit of the industry as a whole.

Revenue Ruling 56-65, published in Cumulative Bulletin 1956-1, on page 199, held that a local organization whose principal activity consisted of furnishing particular information and specialized individual service to its individual members engaged in a particular industry through publications and other means to effect economies in the operation of their individual businesses was performing particular services for individual persons. Such organization did not qualify for exemption under section 501(c)(6) of the Internal Revenue Code as a business league even though it performed functions which were of benefit to the particular industry and the public generally.

Revenue Ruling 56-84, published in Cumulative Bulletin 1956-1, on page 201, held that an organization operated primarily for the purposes of promoting, selling, and handling the national advertising in its members' publications is engaged in the performance of particular services for individual members as distinguished from activities for the improvement of business conditions of the industry as a whole. The organization was not entitled to exemption from Federal income tax under Code section 501(c)(6).

Revenue Ruling 67-77, published in Cumulative Bulletin 1967-1, on page 138, held that an organization composed of dealers in a certain make of automobile in a designated area organized and operated for the primary purpose of financing general advertising campaigns to promote, with funds contributed by dealer members, the sale of that make of automobile was not entitled to exemption under section 501(c)(6). The rationale of this denial of exemption was that the organization was performing particular services for its members.

[REDACTED]
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Your organization is similar to the organizations described in Revenue Rulings 56-65, 56-84, 67-77 and the court case "National Muffler Dealers' Association v. U.S.", in that, your organization limits its membership and activities to only [REDACTED] and its franchises. Your advertising campaigns are geared only to those franchises within a certain area and not industry wide. The advertising campaigns affects each business's economy as each business contributes, by franchise agreement, [REDACTED] % of total gross receipts per month. Since each business is required to participate in the fund, particular services are being performed for them. This also results in the net earnings of the organization inuring to the benefit of private shareholders or individuals or those who have a share in the enterprise.

The information submitted depicting advertising material containing listings of the names of individual members constitutes advertising for the individuals so advertised and is thus considered the performance of particular services for such individuals, rather than an activity aimed at the improvement of general business conditions.

Your activities are found to constitute the performance of particular services for your members. The net earnings of the organization also inure to the benefit of all businesses affiliated with [REDACTED] private shareholders or individuals. You are not improving conditions in one or more lines of business and your activities do not serve the industry as a whole, but only the members of your organization. Your business activities also benefit members by providing them with goods and services.

Based on the information submitted and the applicable law cited above, it is concluded that you do not qualify for tax exemption as an organization described in section 501(c)(6) of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you do not appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will be our final determination on this matter.

[REDACTED]
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Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]
District Director

Enclosure:
Publication 892